

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)

4 Under the Sales and Use Tax Law of:)

5 EDMOND A. HEINBOCKEL and)

6 LYDIA ROSE HEINBOCKEL)

7 Petitioners)

Account Number: SP H UT 84-075234

Case ID 354404

San Luis Obispo, San Luis Obispo County

8 Type of Transaction: Purchase of aircraft

9 Date of Purchase: 09/24/04

10 Item Disputed Amount

11 Purchase price of aircraft \$277,500

12 Tax as determined and protested: \$20,120.00

13 Proposed tax redetermination \$20,120.00

Interest through 4/30/11 10,764.1814 Total tax and interest \$30,884.18Monthly interest beginning 5/1/11 \$117.37

15 This matter was previously scheduled for Board hearing on October 30, 2008, February 24,
16 2009, April 13, 2010, and July 13, 2010, but was postponed because petitioners requested additional
17 time to file a brief, petitioners filed a request for reconsideration, petitioners' representative was in his
18 busy season, and petitioners filed a settlement proposal, respectively. The Board hearing was
19 rescheduled for Board hearing on September 14, 2010, but petitioners did not respond to the Notice of
20 Hearing. Accordingly, the Board Proceedings Division informed petitioner that this matter would be
21 presented to the Board for decision without oral hearing. Subsequently, petitioner contacted the Board
22 Proceedings Division to request a Board hearing.

23 UNRESOLVED ISSUE

24 **Issue:** Whether petitioners' use of the subject aircraft qualified for the common carrier
25 exemption. We find that the exemption is inapplicable and that use tax applies.

26 There is no dispute that petitioners, a husband and wife who live in California, jointly
27 purchased the aircraft, which was located in California, on September 24, 2004. Petitioners submitted
28 a Combined State and Local Consumer Use Tax Return for Aircraft on which they reported a purchase

1 price of \$277,500 and claimed exemption from use tax on the basis that the aircraft was used
2 principally in common carrier activities. The Sales and Use Tax Department (Department) denied the
3 claimed exemption. The Department found no indication that petitioners used the aircraft to offer
4 transportation services indiscriminately to the public. All invoices for transportation service using this
5 aircraft are to Visual Purple, a business owned by Mr. Heinbockel. Furthermore, the amounts of gross
6 receipts reported on federal income tax returns (FITR's) do not correspond with the amounts shown on
7 the invoices petitioners provided, and the amounts of gross receipts reported on FITR's (\$4,748 for
8 2004 and \$3,720 for 2005) do not reflect income from common carrier use in excess of 20 percent of
9 the cost of the aircraft or \$50,000.

10 Petitioners contend first that, if any tax is due, it is sales tax for which the seller is liable
11 because he did not take a resale certificate or exemption certificate from petitioners at the time of the
12 sale in California. Second, petitioners contend that their purchase of the aircraft is exempt because
13 they used the aircraft principally in common carrier operations. Third, petitioners contend that the
14 amount of gross receipts used to determine whether the receipts from common carriage meet the
15 benchmark established in section 6366 (20 percent of the purchase cost or \$50,000.00, whichever is
16 less) should not exclude compensation paid by the owner of a related entity.

17 The seller of the aircraft did not hold a seller's permit, nor does the evidence indicate that the
18 seller was required to hold a seller's permit for sales of aircraft. Thus, the sale was exempt from sales
19 tax (Rev. & Tax. Code § 6283), and the applicable tax is thus use tax, owed by petitioners unless the
20 use of the aircraft is exempt from tax. (Rev. & Tax. Code, § 6202, subd. (a); Cal. Code Regs., tit. 18,
21 § 1610, subd. (c)(2)(A).)

22 The applicable exemption is provided by Revenue and Taxation Code section 6366 for use of
23 an aircraft as a common carrier. That provision includes a threshold for income from common carrier
24 operations which a purchaser must exceed to avoid the presumption that the purchaser is not engaged
25 in business as a common carrier. That threshold is yearly gross receipts from use of that aircraft as a
26 common carrier of at least 20 percent of the purchase cost of the aircraft or \$50,000, whichever is less.
27 (Rev. & Tax. Code, § 6366, subd. (b).) Since the purchase price exceeded \$250,000, the applicable
28 amount is \$50,000 per year. However, petitioners reported gross receipts on their FITR's of \$4,748 in

1 2004 and \$3,720 in 2005, both of which are, of course, significantly less than \$50,000. Thus, based on
2 the FITR's, it is presumed that petitioners were not engaged in business as a common
3 carrier and that the exemption does not apply. Petitioners assert, however, that they actually had gross
4 receipts of \$79,390.05, and they have provided sales invoices to support that figure. Petitioners state
5 the amounts reported on FITR's were compiled on a cash basis, rather than an accrual basis, and the
6 difference between those amounts and the \$79,390.05 represents outstanding balances. However, this
7 assertion conflicts with the statements on the FITR's themselves which indicate that the FITR's were
8 prepared on the accrual basis.

9 We find the FITR's, which were signed under penalty of perjury, to be more credible evidence
10 of petitioner's actual gross receipts than the invoices that show a greater amount. Thus, the amounts of
11 gross receipts are less than the minimum established to avoid application of the presumption under
12 section 6366. In any event, regardless of the actual amount of gross receipts, petitioner concedes that
13 all gross receipts it did receive were from Visual Purple, a company owned by Mr. Heinbockel, for
14 dedicated standby service. As such, even if these amounts could be regarded as having been paid for
15 common carrier service, none of such amounts are gross receipts that can be used to overcome the
16 presumption. (Cal. Code Regs., tit. 18, § 1593, subd. (c)(1)(F).)

17 Petitioners state that they posted a flier to advertise their services on a bulletin board at the San
18 Luis Obispo airport. Petitioners admit, however, that they received no response to the flier, did not
19 advertise their service in any other way, and that they never had a paying customer other than Visual
20 Purple. We find the evidence does not establish that petitioners offered their services indiscriminately
21 to the public, and that the evidence certainly does not overcome the presumption that the aircraft was
22 not used as a common carrier. Furthermore, petitioners have not established that their use of the
23 aircraft satisfied the basic test for common carrier use, which is to show that, during the 12-month
24 period following the aircraft's first operational use, the aircraft was used as a common carrier for more
25 than one-half of its operational use. (Cal. Code Regs., tit. 18, § 1593, subd. (c)(1).) As such,
26 petitioners' use of the aircraft does not qualify for the common carrier exemption without regard to the
27 presumption discussed above and without regard to whether petitioners offered their services
28 indiscriminately to the public.

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Retired Annuitant